

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
RECEIVED

DEC 27 2005

ROBERT H. SHEPHERD, CLERK
BY [Signature] DEPUTY

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION**

**L. C. WILEY and DIANNE WILEY,
Individually and on behalf of JASON
WILEY and CRYSTAL WILEY**

CIVIL ACTION NO. 05-1669-A

-vs-

JUDGE DRELL

MERCK & CO., INC., et al.

MAGISTRATE JUDGE KIRK

RULING

A telephone conference involving counsel for all parties was held on November 22, 2005 at which pending motions were discussed. For the reasons set forth herein, the Motion [to Dismiss] for Failure to State a Claim for Which Relief Can Be Granted and/or Motion for Summary Judgment filed by defendant, Arun Kishor Karsan, M.D. (Document No. 13) is GRANTED and all claims against Dr. Karsan are DISMISSED WITHOUT PREJUDICE. Additionally, the Motion to Remand filed by Plaintiffs (Document No. 15) is DENIED AS MOOT. Further, Merck & Co., Inc.'s Motion to Stay All Proceedings Pending Transfer Decision by the Judicial Panel on Multidistrict Litigation (Document No. 17) is GRANTED, and this matter is STAYED pending such decision.

Under the Louisiana Medical Malpractice Act, no action against a qualified health care provider "may be commenced in any court before the claimant's

proposed complaint has been presented to a medical review panel” La. R.S. 40:1299.47(B)(1)(a)(i). The Certificate of Enrollment provided by Dr. Karsan (Document No. 13, Exhibit “A”) shows he was a qualified health care provider within the meaning of the Louisiana Medical Malpractice Act at the time the alleged malpractice occurred, and he remains covered under the Act. See La. R.S. 40:1299.41(A)(1) and 40:1299.42. Plaintiffs do not contend they have presented their claim against Dr. Karsan to a medical review panel, and Dr. Karsan has properly raised this issue before both the State court (Document No. 3) and this Court. The claims against Dr. Karsan are premature and will be dismissed. This decision renders the Motion to Remand (Document No. 15) moot.

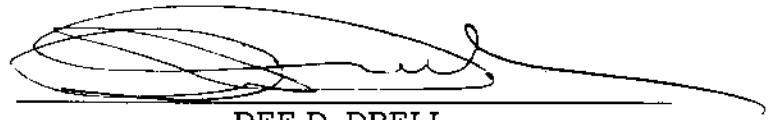
Finally, the Court finds the interests of judicial economy support issuing a stay of these proceedings pending a decision from the Judicial Panel on Multidistrict Litigation (“MDL”) regarding whether this case will be included with the multitude of other Vioxx cases currently coordinated for pretrial management before Judge Fallon in the Eastern District of Louisiana.

Accordingly, the Motion [to Dismiss] for Failure to State a Claim for Which Relief Can Be Granted and/or Motion for Summary Judgment filed by defendant, Arun Kishor Karsan, M.D. (Document No. 13) is GRANTED and all claims against Dr. Karsan are DISMISSED WITHOUT PREJUDICE.

Additionally, the Motion to Remand filed by Plaintiffs (Document No. 15) is DENIED AS MOOT.

Further, Merck & Co., Inc.'s Motion to Stay All Proceedings Pending Transfer Decision by the Judicial Panel on Multidistrict Litigation (Document No. 17) is GRANTED, and this matter is STAYED pending such decision.

SIGNED on this 27th day of December, 2005, at Alexandria, Louisiana.

A handwritten signature in black ink, appearing to read "Dee D. Drell", is written over a horizontal line.

DEE D. DRELL
UNITED STATES DISTRICT JUDGE